

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/873,259 Confirmation No. 5965
Applicant : Teruo TANAKA et al. TC/GAU : 3695
Filed : June 5, 2001 Examiner : S.E. CHENCINSKI
Title : METHOD AND APPARATUS FOR PROVIDING BROKER
SERVICE TO AUCTIONS
Docket No. : NIT-278
Customer No.: 24956

REPLY BRIEF

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Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

August 5, 2011

Sir:

This Reply Brief is filed in reply to the Examiner's Answer mailed June 9, 2011. The Reply Brief does not include any new or non-admitted amendment or any new or non-admitted affidavit or other evidence, in compliance with 37 CFR §41.41. Entry and consideration of this Reply Brief is respectfully requested.

ARGUMENT

The arguments in the Examiner's Answer are based on responses to Arguments A-D presented in the Appeal Brief. As discussed below, the Examiner presents at least three new grounds of rejection in the Examiner's Answer that are inconsistent with those previously presented in the Final Office Action. Under each of those new grounds of rejection, the basic thrust of the rejection does not remain the same. As such, the Appellants have not been given a fair opportunity to react to

the rejections. Accordingly, they should be rejected under 37 C.F.R. 49.31(a)(2).

Nevertheless, the new grounds of rejection are inapposite, as discussed below.

Therefore, they should be rejected on the merits additionally or alternatively.

A. The References Do Not Teach or Suggest a Brokerage Computer Between an Information Terminal or User Computer of the User and a Plurality of Auction Servers for Performing the Functions As Recited in the Claims

The Appeal Brief states that none of the cited references disclose the Brokerage Server ("computer" in the claims) that provides the auction brokerage service as recited in the method of claim 1. The Examiner has not pointed to any specific teaching in Huberman for the computer (brokerage server) that resides between an information terminal of a user and auction servers to perform brokerage operation for an auction. The other references (Shoham, Odom, Kinney, Koopersmith) do not disclose the Brokerage Server and hence do not cure the deficiencies of Huberman.

In response, the Examiner argues at page 14 of the Examiner's Answer that Huberman discloses a brokered auction, that "a computer server is inherent," and that the "ordinary practitioner would have seen it as suggested that Huberman thus discloses the claimed computer that resides between an information terminal of a user and a plurality of buyers in the preamble of claim 1." This is a new ground of rejection that is inconsistent with the previous one presented by the Examiner. Previously, the Examiner argues: "Huberman discloses a method for an auction brokerage service provided by a computer server that resides between an

information terminal of a user and auction servers to perform brokerage operation for an auction.” **{Final Office Action of July 6, 2010, at page 2, lines 19-21}**

Nevertheless, the new ground of rejection has no merit. The Examiner points to Figures 1 and 2. Figure 2 shows Supplier Process 220, Broker Process 230, and Customer Process 210. As explained in the Appeal Brief at page 9, however, these three correspond to three of the four main elements of the claimed invention, and none of these three correspond to the Brokerage Server.

As to the Examiner's new argument that a computer server is inherent, the Examiner misses the point. Because Huberman discloses only three of the four main elements of the claimed invention for brokered auctioning, whether a computer server is inherent is irrelevant. Appellants' point is that Huberman fails to disclose a main element of the claimed invention, **not** merely that Huberman fails to disclose the use of a computer.

Due to this failure, Huberman and the other references do not teach or suggest the method for auction brokerage service provided by the computer of claim 1 which resides between the information terminal and the plurality of auction servers, as discussed in the Appeal Brief at pages 10-11. For example, the broker process 230 in Huberman does not select information of the auction servers because the broker process 230 itself is essentially an auction server and it does not interact with a plurality of auction servers (i.e., broker processes) to perform brokerage service as recited in claim 1. Instead, the broker process 230 interfaces with customer processes 210 submitting job requests and with supplier processes 220a providing

bids on the job requests. Furthermore, the broker process 230 does not transmit an auction registration request to auction servers (i.e., broker processes), and it does not gather trade information at selected auction servers (i.e., broker processes).

B. The References Do Not Teach or Suggest Simultaneous Auctions by Multiple Auction Servers of an Auctioned Item Owned by the User

The Examiner cites Odom at column 10, lines 51-52 which mentions concurrent trading for both buyer and seller and then argues that concurrent means simultaneous. However, claim 1 recites performing simultaneously auctions of an article which the use owns at a plurality of auction sites. Odom does not disclose a plurality of auction sites for performing simultaneous auctions of an article. Instead, Odom discloses a technique performing the exchange processing in one server (exchange provider 100). In Odom, the multiple concurrent auctions process is described in the step 820 (Col. 10, line 10). The step 820 shows an auction phase in an electronic auction which emulates real-world auctions' functions and abilities (Col. 9, lines 57-61; Col. 10, lines 8-10). This electronic auction is the exchange processing performed by the server (exchange provider 100) disclosed in Odom. The multiple concurrent auctions process disclosed in Odom is the exchange processing performed by only one server (exchange provider 100). The multiple concurrent auctions process disclosed in Odom is an auction processing performed at each auction site.

In short, Odom does **not** disclose a technique using **a plurality of auction sites simultaneously** and hence fails to cure the deficiencies of Huberman.

Moreover, the trading of stocks in Odom involves multiple shares of stock, not an item owned by the user as recited in claim 1.

C. The References Do Not Teach or Suggest Selection of Auction Servers Suitable for the User's Conditions by the Brokerage Computer

Claim 1 recites selecting a plurality of information of the plurality of auction servers suitable for the user's conditions from among stored information related to the auction servers in order to obtain selected auction servers, in response to a request from the information terminal. The Examiner alleges at page 16 of the Examiner's Answer: "Huberman discloses auction servers suitable for the user's conditions by the brokerage computer in Huberman" (citations omitted). This is a new ground of rejection that is inconsistent with the previous one presented by the Examiner. Previously, the Examiner acknowledged that Huberman did not disclose the claimed feature but argued that the selection of auction servers suitable for the user's conditions was implicit in Kinney, Shoham, and Odom. **{Final Office Action of July 6, 2010, at page 4, lines 9-11}** Nevertheless, the new ground of rejection has **no** merit, since nowhere does Huberman disclose **selecting auction servers** (corresponding to Broker Processes 230), much less selecting auction servers suitable for the user's conditions.

D. The Examiner's Assertion that Gathering Trade Information and Tendering the Highest Tendered Price In the Name of a Substitute was Well Known As an Option of Changing an Offer Price is Flawed

The Examiner again presents a new ground of rejection that is inconsistent

with the previous one, in the Examiner's Answer at page 16: "Odom discloses or suggests the equivalent of tendering since the disclosed interactive trading implicitly involves tenders of buy and sell offers of price associated with a quantity of a stock trading offer since buyers and sellers are continuously presenting offers for acceptance per Applicant's argument. Further, the process in Odom is continuously gathering and presenting trade information regarding the ongoing tenders on both sides of buy and sell 'simulating the trading floor of real-world exchanges' (col. 10, ll. 57-59)." Previously, the Final Office Action of July 6, 2010, at page 5, lines 14-27, acknowledged that none of the references explicitly discloses this limitation. The rejection was made on the ground of the following assertion: "The option of changing an offer price such as the minimum acceptable price in an auction was well known at the time of Applicant's invention." **{Final Office Action of July 6, 2010, at page 5, lines 23-25}**

Nevertheless, the new ground of rejection has no merit. Claim 1 recites "gathering trade information of how the auctioned item owned by the user has been bid for at the selected auction servers and tendering to the other selected auction servers the highest tendered price of the bids in the name of a substitute in order to adjust the bid prices to the highest price over all the selected auction servers."

First, Odom fails to teach or suggest gathering trade information "at the selected auction servers." The concurrent auctions process disclosed in Odom is the exchange processing performed by only one server (exchange provider 100). Odom does not select auction servers, does not gather trade information at auction

servers, and does not gather trade information at selected auction servers.

Second, Odom fails to teach or suggest tendering to "the other **selected** auction servers" the highest tendered price of the bids in the name of a substitute. Odom does not select auction servers, does not tender to other auction servers, and does not tender to other selected auction servers.

Third, Odom fails to teach or suggest tendering to the other selected auction servers the highest tendered price of the bids "in the **name of a substitute.**" Odom is directed to stock trading. There is no such thing as tendering in the name of a substitute for stocks.

CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the rejection of the claims on appeal should be reversed and the application allowed.

The Commissioner is hereby authorized to charge any shortage in the fees due, or credit any overpayment, to Deposit Account No. 50-1417 (referencing Attorney Docket No. NIT-278).

Respectfully submitted,

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